

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

ENTERED

DEC 6 2002

TAWANA C. MARSHALL, CLERK

IN RE:

LORAX CORPORATION,  
Debtor.

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CASE NO. 02-48396-DML-11

**MEMORANDUM ORDER**

The above-styled case was commenced on October 31, 2002, by the filing of an involuntary petition under chapter 11 of the Bankruptcy Code. *See* 11 U.S.C. § 303(a). The court conducted a status conference regarding the case on November 25, 2002. No response having been made to the involuntary petition, an order for relief was entered on December 2, 2002, and the court now exercises jurisdiction in this case over Debtor pursuant to 28 U.S.C. § 1334(a) and 157(b)(1).

At the initial status conference, the court learned that neither Debtor nor any of the petitioning creditors was represented by counsel. Though the petitioners are individuals and so able to act for themselves, Debtor is a corporation. A corporation may not appear or act in a case other than through counsel. *Rowland v. California Men's Colony*, 506 U.S. 194, 202, 113 S. Ct. 716, 721 (1993); *Joe Hand Promotions, Inc. v. Tazz Man, Inc.*, 2002 U.S. Dist. Lexis 19818 (N.D. Tex. 2002). The court therefore set a second status conference for December 5, 2002, and directed that Debtor obtain representation.

At the December 5 status conference, Mark Taubenfeld, Esq., an attorney duly admitted to practice in this court, appeared and announced that he was in discussions with Debtor regarding the possibility of representing it. Mr. Taubenfeld asked that the court set another status

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conference approximately 30 days in the future to give Debtor additional time to retain counsel. Mr. Taubenfeld was supported in this request by one of the petitioners.

Counsel for Henderson County Property Corporation ("HCPC"), a party in interest, and other counsel opposed the Debtor, instead asking that the court convert this case to a case under chapter 7 or direct the United States trustee to appoint a trustee under 11 U.S.C. § 1104(a). The court is not prepared to order conversion of the case. Though the possibility of appointment of a trustee was discussed at the initial status conference, there was no prior notice that conversion might occur. Moreover, the court has inadequate information (let alone evidence) from which to conclude that conversion would be appropriate.

On the other hand, the court is not prepared to allow Debtor to continue as a debtor in possession without counsel. Not only is a corporate debtor without counsel severely hobbled in its ability to participate in its Chapter 11 case, but also a chapter 11 debtor is fiduciary, holding and managing its assets for the benefit of its creditors and other parties in interest. *In re Kelso*, 196 B.R. 363, 371 (Bankr. N.D. Tex. 1996). *See also, In re Chapel Gate Apts., Ltd.*, 64 B.R. 569, 576 (Bankr. N.D. Tex. 1986). As such, counsel for the Debtor is critical to the Court in a chapter 11 case to ensure Debtor's performance of its duties.


In the absence of counsel for Debtor, the court sees no realistic alternative to appointment of a trustee. Though the Debtor's principal asset appears to be in the control of HCPC or one of its affiliates, Debtor (according to a letter to the court from Walt Sommerman, Debtor's president) has numerous items of business that the court believes may require immediate attention and action, including in court.

As the appointment of a trustee was discussed at the initial status conference, the court believes notice of this possibility was adequate under the circumstances. See 11 U.S.C. § 102(1)(A) and (B). This court may direct appointment of a trustee on its own motion. See 11 U.S.C. § 105; *Fukutomi v. United States Trustee (In re Bibb, Inc.)*, 76 F. 3d 256, 258 (9th Cir. 1996); *In re Embrace Sys. Corp.*, 178 B.R. 112 (Bankr. W.D. Mich. 1995). *Matter of Mother Hubbard, Inc.*, 152 B.R. 189, 197 (Bankr. W.D. Mich. 1993).

For the reasons stated herein, it is therefore

ORDERED that, following consultation with parties in interest as required by 11 U.S.C. § 1104(d), the United States trustee appoint, subject to this court's approval, a person, disinterested within the meaning of 11 U.S.C. § 101(14), to serve as trustee for the Debtor in this case.

Signed this the 6<sup>th</sup> day of December 2002.

  
DENNIS MICHAEL LYNN,  
UNITED STATES BANKRUPTCY JUDGE

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Total notices mailed: 6

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